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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,727	01/27/2000	David M. Austin	AUZ-001 P	8984
7590	04/21/2005		EXAMINER	
Wesley L Austin esq 1244 E. 1650 S. Bountiful, UT 84010			ZIA, SYED	
			ART UNIT	PAPER NUMBER
			2131	

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/491,727

Applicant(s)

AUSTIN ET AL.

Examiner

Syed Zia

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 28, 2005 has been entered.

Response to Amendment

This office action is in response to amendment filed on January 28, 2005. Original application contained Claims 1-32. Applicant currently amended 1, 16-18, 20, 29, 30, and 31. The amendment filed have been entered and made of record. Previous objection to drawings and specification has been withdrawn. Presently pending claims are 1-32.

Response to Arguments

Applicant's arguments previously filed on May 17, 2004 have been fully considered but they are not persuasive because of the following reasons:

Regarding Claims 1-32 applicants argued that the system of cited prior arts (CPA) [Drake] does not teach, "accessing instructions that access observer data, the observer data including data ... and also operating to create data from the observing of the observer Program", "reading instructions that tread memory of the computer system to obtain memory data", "comparing instructions that compare the observer data with memory data read in from memory to determine... computer system, "generating instructions that ... whether the observer program is present on the computer system; and "outputting instructions that obtain the results and provide the results for a user".

This is not found persuasive. Cited prior art teaches system and method computer software authentication, protection and security method that involves replacing code with is vulnerable to eavesdropping with equivalent code with vulnerability removed which communicates with hardware and disables interrupts. The software security method involves using anti-spy techniques within the input routine, which prevent or hamper eavesdropping on the ID-Data. Tamper detection techniques are used within or accessed by the software to disallow the subsequent entry of ID-Data into input routines is tampering is detected. Code, which is vulnerable to eaves dropping, is replaced with equivalent code with the vulnerability removed. The equivalent code communicates directly with the hardware of the computer while disabling system interrupts or other functions, which would permit rouge software to eavesdrop. Therefore, the system of cited prior art teaches security of computer software, automatically detects tampering of software and code, prevents decompilation reverse engineering, and disassembly, and also prevents executing tracing and debugging by use of code designed to detect and prevent these operations.

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As a result, cited prior art does implement and teaches a system and method for detecting the presence of a computer program for monitoring a user's computer activities and countermeasures against such computer software.

Applicants still have failed to explicitly identify specific claim limitations, which would define a patentable distinction over prior arts.

The examiner is not trying to teach the invention but is merely trying to interpret the claim language in its broadest and reasonable meaning. The examiner will not interpret to read narrowly the claim language to read exactly from the specification, but will interpret the claim language in the broadest reasonable interpretation in view of the specification. Therefore, the examiner asserts that cited prior art does teach or suggest the subject matter broadly recited in independent and subsequent dependent claims. Accordingly, rejections for Claims 1-32 are respectfully maintained.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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2. Claim 1-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Drake (U.S. Patent No. 6,006,328). With respect to claim 1, Drake teaches a system for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including computer software fro running on the computer system, the system (see abstract; col. 3, lines 32-44), comprising:

the observer data that includes data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program;, and accessing instructions that access the observer data, (see col. 3, lines 32-67);

reading instructions that tread memory of the computer system to obtain memory data (see col. 4, lines 47-65; col. 6, lines 10-20)

comparing instructions that compare the observer data with memory data read in from memory to determine whether the observer program is present on the computer system (see col. 6, lines 5-48);

generating instructions that generate results from the comparing, wherein the results generated indicate whether the observer program is present on the computer system (see col. 6, lines 5-48); and

outputting instructions that obtain the results and provide the results for a user (see col. 4, lines 47-65; col. 6, lines 5-48).

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3. Claim 2 is rejected as above in rejecting claim 1, wherein the reading instructions read the memory of the computer system by querying the operating system of the computer system for the tasks running and by examining task information provided by the operating system (see col. 3, lines 32-67).
4. Claim 3 is rejected as above in rejecting claim 1, wherein the outputting instructions provide the results to a user through a graphical user interface (see col. 9, lines 8-14; col. 10, lines 12-16).
5. Claim 4 is rejected as above in rejecting claim 1, wherein the reading instructions read the memory of the computer system by querying the file system of the computer system for the files located on storage media and by examining file information provided by the file system (see col. 6, lines 7-20).
6. Claim 5 is rejected as above in rejecting claim 1, wherein the reading instructions read the memory of the computer system by opening a file located on storage media and by examining contents of the file (see col. 6, lines 10-20).
7. Claim 6 is rejected as above in rejecting claim 1, wherein the observer data includes data descriptive of a plurality of observer programs and wherein the system compares the observer data with the memory data to determine whether any known observer program is present (see col. 6, lines 7-48).
8. Claim 7 is rejected as above in rejecting claim 1, further comprising countermeasure instructions wherein the countermeasure instructions alter the operation of the observer program (see col. 3, lines 46-52).

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9. Claim 8 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering observer program configuration data (see col. 4, lines 47-65; col. 8, lines 3-12).

10. Claim 9 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering a file on the computer system (see col. 7, lines 12-23; col. 8, lines 3-12).

11. Claim 10 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by altering reporting data generated by the observer program (see col. 5, lines 20-34; col. 7, lines 53-67 to col. 8, lines 1-12).

12. Claim 11 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by replacing reporting data generated by the observer program (see col. 5, lines 38-62).

13. Claim 12 is rejected as above in rejecting claim 7, wherein the countermeasure instructions alter the operation of the observer program by replacing a file of the observer program (see col. 5, lines 20-34).

14. Claim 13 is rejected as above in rejecting claim 1, wherein the observer data includes data descriptive of observing activity typical of observing programs and wherein the system compares the observer data with the memory data to determine whether any known observer program is present (see col. 6, lines 5-48).

15. Claim 14 is rejected as above in rejecting claim 1, further comprising the observer data, wherein the observer data includes a list of files and modules that are part of the observer program software, and wherein the reading instructions read the memory of the computer system

by querying the operating system of the computer system for the tasks running and by examining task information provided by the operating system, and wherein the reading instructions also read the memory of the computer system by querying the file system of the computer system for the files located on storage media and by examining file information provided by the file system, and wherein the outputting instructions provide the results to a user through a graphical user interface (see col. 3, lines 32-57; col. 4, lines 47-65; col. 6, lines 5-48).

16. Claim 15 is rejected as above in rejecting claim 1, wherein the system is made available over a computer network through a web site (see col. 13, lines 28-34).

17. With respect to claim 16, Drake teaches a system for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including computer software for running on the computer system, the system (see abstract; col. 3, lines 32-44), comprising:

observer data that includes data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program, and means for accessing the observer data, (see col. 3, lines 32-67);

means for reading memory of the computer system to obtain memory data (see col. 4, lines 47-65; col. 6, lines 10-20).

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means for comparing the observer data with memory data to determine whether the observer program is present on the computer system (see col. 6, lines 5-48);

means for generating results from the comparison, wherein the results generated indicate whether the observer program is present on the computer system (see col. 6, lines 5-48); and

means for outputting the results for a user see col. 4, lines 47-65; col. 6, lines 5-48).

18. With respect to claim 17, Drake teaches a method for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including computer software for running on the computer system, the system (see abstract; col. 3, lines 32-44), the method comprising the steps of:

accessing observer data, the observer data including data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program (see col. 3, lines 32-67);

reading memory of the computer system to obtain memory data (see col. 4, lines 47-65; col. 6, lines 10-20);

comparing the observer data with memory data read in from memory to determine whether the observer program is present on the computer system (see col. 6, lines 5-48);

generating results from the reading and comparing, wherein the results generated indicate whether the observer program is present on the computer system (col. 6, lines 5-48); and

outputting the results for a user (see col. 4, lines 47-65; col. 6, lines 5-48).

19. With respect to claim 18, Drake teaches a computer-readable medium containing instructions for detecting the presence of an observing program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, wherein the instructions comprise executable instructions for implementing a method,(see abstract; col. 3, lines 32-44) comprised of the steps of:

accessing observer data, the observer data including data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program (see col. 3,lines 32-67);

reading memory of the computer system to obtain memory data (see col. 4,lines 47-65; col. 6, lines 10-20);

comparing the observer data with memory data read in from memory to determine whether the observer program is present on the computer system (see col. 6, lines 5-48);

generating results from the reading and comparing, wherein the results generated indicate whether the observer program is present on the computer system (see col. 6, lines 5-48); and

outputting the results for a user (see col. 4, lines 47-65; col. 6, lines 5-48).

20. Claim 19 is rejected as above in rejecting claim 18, wherein the computer-readable medium is a data transmission medium (see col. 13, lines 27-33).

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21. With respect to claim 20, Drake teaches a system for altering the operation of an observer program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including computer software fro running on the computer system, (see abstract; col. 3, lines 32-44), comprising:

observer data that includes data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program; accessing instructions that access the observer data (see col. 3,lines 32-67);

reading instructions that read memory of the computer system to obtain files relating to the observer program (se col. 4, lines 47-65; col. 6, lines 10-20);

altering instructions that alter a file relating to the observer program such that the operation of the observer program is changed (see col. 5, lines 42-62; col. 8, lines 3-12).

22. Claim 21 is rejected as above in rejecting claim 20, comprising an observer detection program (see col. 3, lines 32-44).

23. Claim 22 is rejected as above in rejecting claim 20, further comprising inputting instructions that display to a user options regarding the altering and that take input from the user relating to the options (see col. 11, lines 30-46).

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24. Claim 23 is rejected as above in rejecting claim 20, wherein the altering instructions alter the operation of the observer program by altering observer program configuration data (see col. 4, lines 47-67 to col. 5, lines 1-14; col. 6, lines 21-31).

25. Claim 24 is rejected as above in rejecting claim 20, wherein the altering instructions alter the operation of the observer program by altering a file on the computer system (see col. 4, lines 47-67 to col. 5, lines 1-14)

26. Claim 25 is rejected as above in rejecting claim 20, wherein the altering instructions alter the operation of the observer program by altering reporting data generated by the observer program (see col. 4, lines 47-65; col. 5, lines 37-58).

27. Claim 26 is rejected as above in rejecting claim 20, wherein the altering instructions alter the operation of the observer program by replacing reporting data generated by the observer program (see col. 4, lines 47-65; col. 5, lines 37-58).

28. Claim 27 is rejected as above in rejecting claim 20, wherein the altering instructions alter the operation of the observer program by replacing a file of the observer program (see col. 4, lines 47-65; col. 5, lines 37-58).

29. Claim 28 is rejected as above in rejecting claim 20, wherein the system is made available over a computer network through a web site (see col. 13, lines 27-33).

30. With respect to claim 29, Drake teaches a system for altering the operation of an observer program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the system including

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computer software fro running on the computer system, the system (see abstract; col. 3, liens 32-44; col. 4, lines 47-65), the system comprising:

observer data that includes data descriptive of an observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create log file from the observing of the observer program, and means for accessing the observer data (see col. 3, lines 32-67);

means for reading memory of the computer system to obtain files relating to the observer program (see col. 4, lines 47-67; col. 6, lines 10-20); and

means for altering a file relating to the observer program such that the operation of the observer program is changed (see col. 5, lines 42-62; col. 8, lines 3-12).

31. With respect to claim 30, Drake teaches a method for altering the operation of an observer program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, the method including computer software fro running on the computer system, the system (see abstract; col. 3, lines 32-44; col. 4, lines 47-65), the method comprising the steps of:

accessing observer data, the observer data including data descriptive of the observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create a log file from the observing of the observer program (see col. 3, lines 32-67);

reading memory of the computer system to obtain files relating to the observer program (see col. 4, lines 47-67; col. 6, lines 10-20) and

altering a file relating to the observer program such that the operation of the observer program is; changed (see col. 5, lines 42-62; col. 8, lines 3-12).

32. With respect to claim 31, Drake teaches a computer-readable medium containing instructions for altering the operation of an observer program on a computer system, wherein the observing program is programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and to create data from the observing on the computer system, wherein the instructions comprise executable instructions for implementing a method (see abstract; col. 3, lines 32-44; col. 4, lines 47-65), comprised of the steps of

accessing observer data, the observer data including data descriptive of the observer program, the observer program being programmed to observe a user's activities on the computer system by monitoring user input entered through a user input device and also operating to create a log file from the observing of the observer program (see col. 3, lines 32-67);

reading memory of the computer system to obtain files relating to the observer program (see col. 4, lines 47-65; col. 6, lines 10-20); and

altering a file relating to the observer program such that the operation of the observer program is changed (see col. 5, lines 42-62; col. 8, lines 3-12).

33. Claim 32 is rejected as above in rejecting claim 31, wherein the computer-readable medium is a data transmission medium (see col. 13, lines 27-33).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed Zia whose telephone number is 571-272-3798. The examiner can normally be reached on 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SZ

April 05, 2005